

ORDINANCE NO. 09-100

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A REAFFIRMATION OF HODAG NOTE OBLIGATION AND EXTENSION OF MATURITY DATE WITH INTEREST AGREEMENT; IN SUBSTANTIAL FORM AS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", WHICH EXTENDS THE MATURITY DATE OF A HODAG NOTE OBLIGATION, SECURED BY A SECOND MORTGAGE, FOR ONE YEAR COMMENCING ON NOVEMBER 25, 2009 AND ENDING ON NOVEMBER 24, 2010, WITH AN OPTION TO RENEW FOR AN ADDITIONAL YEAR OR PORTION THEREOF AT THE DISCRETION OF THE CITY, SUBJECT TO PAYMENT OF 5% ANNUAL INTEREST DUE ON DECEMBER 1, 2009 AND SUBJECT TO AN ADDITIONAL 5% INTEREST PAYMENT DUE ON DECEMBER 1, 2010 IF THE NOTE IS EXTENDED AN ADDITIONAL YEAR OR PORTION THEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Shelter Group Southeast-Hialeah, a Minnesota limited partnership, a prior owner of a 245-unit residential development known as Villa Hialeah located at 2500 West 56 Street, Hialeah, Florida entered into a Second Mortgage ("HODAG Mortgage") on November 6, 1987 to the City, as recorded in Official Records Book 13560, at page 1626, of the Public Records of Miami-Dade County, Florida to secure a Second Mortgage Note dated November 6, 1987 in the principal sum of \$4,800,000 ("HODAG Note"), the proceeds of which was used to finance a portion of the acquisition of the property; and

WHEREAS, the Second Mortgage Note provided that the principal balance due and owing shall be paid 22 years from the date of the Owner/Grantee Agreement [Housing Development Grant Covenants Agreement among City of Hialeah, Hialeah Housing Development Corporation and Shelter Group Southeast-Hialeah], which was deemed to be the recording date of November 25, 1987; and

WHEREAS, pursuant and subsequent to a Subordination and Assumption Agreement dated December 23, 2002, to which the City agreed to subordinate the HODAG Mortgage and HODAG Note and to which 245 C&C, LLC agreed to assume the monetary and non-monetary obligations of the HODAG Mortgage and HODAG Note and other subordinated debt and security documents, 245 C&C, LLC purchased Villa Hialeah; and

WHEREAS, since the execution of the Second Mortgage Note, there has not been any payment made to reduce the principal sum and the Owner intends that no payments will be made as of November 25, 2009 so that the entire principal sum of \$4,800,000 will be due and payable; and

WHEREAS, on September 8, 2009, the Owner requested to extend the maturity date of the Second Mortgage Note due to difficulties in obtaining refinancing due to the economic crises and due to incurring a prepayment penalty in paying off the first mortgage; and

WHEREAS, the City of Hialeah finds that it is in its best interest to extend the maturity date of the HODAG Note for one year, with an option to extend the HODAG Note for an additional year, with 5% interest payable in advance, through the execution of the Reaffirmation of HODAG Note Obligation and Extension of Maturity Date with Interest.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into a Reaffirmation of HODAG Note Obligation and Extension of Maturity Date with Interest Agreement, in substantial form as attached hereto and made a part hereof as Exhibit "1", which extends

the maturity date of a HODAG Note Obligation, secured by a Second Mortgage, for one year commencing on November 25, 2009 and ending on November 24, 2010, with an option to renew for an additional year or portion thereof at the discretion of the City, subject to payment of 5% annual interest due on December 1, 2009 and subject to an additional 5% interest payment due on December 1, 2010 if the Note is extended an additional year or portion thereof.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be assessed a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty described above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

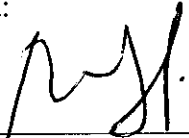
PASSED and ADOPTED this 8th day of December, 2009.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



Carlos Hernandez
Council President

Attest:



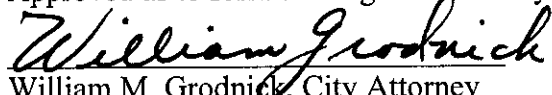
Rafael E. Granado, City Clerk

Approved on this 9th day of December, 2009.



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Hernandez, Yedra voting "Yes", Councilmember Gonzalez absent.

**REAFFIRMATION OF HODAG NOTE OBLIGATION AND EXTENSION OF
MATURITY DATE WITH INTEREST AGREEMENT**

This Agreement is made as of the ____ day of November, 2009, by and between the City of Hialeah, Florida, a Florida municipal corporation, and 245 C&C, LLC, a Florida limited liability company ("Owner").

RECITALS:

WHEREAS, Shelter Group Southeast-Hialeah, a Minnesota limited partnership, a prior owner of a 245-unit residential development known as Villa Hialeah located at 2500 West 56 Street, Hialeah, Florida entered into a Second Mortgage ("HODAG Mortgage") on November 6, 1987 to the City, as recorded in Official Records Book 13560, at page 1626, of the Public Records of Miami-Dade County, Florida to secure a Second Mortgage Note dated November 6, 1987 in the principal sum of \$4,800,000 ("HODAG Note"), the proceeds of which was used to finance a portion of the acquisition of the property; and

WHEREAS, the Second Mortgage Note provided that the principal balance due and owing shall be paid 22 years from the date of the Owner/Grantee Agreement [Housing Development Grant Covenants Agreement among City of Hialeah, Hialeah Housing Development Corporation and Shelter Group Southeast-Hialeah], which was deemed to be the recording date of November 25, 1987; and

WHEREAS, since the execution of the Second Mortgage Note, there has not been any payment made to reduce the principal sum and the Owner intends that no payments will be made as of November 25, 2009 so that the entire principal sum of \$4,800,000 will be due and payable; and

WHEREAS, on September 8, 2009, the Owner requested to extend the maturity date of the Second Mortgage Note due to difficulties in obtaining refinancing due to the economic crises and due to incurring a prepayment penalty in paying off the first mortgage; and

WHEREAS, the parties acknowledge that the City, in exchange for 5% interest subject to the terms and conditions set forth herein, shall extend the maturity date of the HODAG Note for one year, with an option to extend the HODAG Note for an additional year; and

WHEREAS, pursuant and subsequent to a Subordination and Assumption Agreement dated December 23, 2002, to which the City agreed to subordinate the HODAG Mortgage and HODAG Note and to which 245 C&C, LLC agreed to assume the monetary and non-monetary obligations of the HODAG Mortgage and HODAG Note and other subordinated debt and security documents, 245 C&C, LLC purchased Villa Hialeah; and

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

Reaffirmation of HODAG Note Obligation and Extension of Maturity Date Agreement
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1. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. The parties agree to extend the maturity date of the HODAG Note for one year, commencing on November 25, 2009 and ending on November 25, 2010, with an option, at the sole discretion of the City of Hialeah, to extend the maturity date of the HODAG Note for one additional year.

3. In consideration of the extended maturity date for the first year, the Owner shall pay the City on December 1, 2009, the sum of \$240,000, which represents 5% interest on the outstanding principal sum for the extension of one year, ending on November 25, 2010. If the City exercises the option to extend the maturity date of an additional year, the Owner shall pay the City on December 1, 2010, the sum of \$288,000, which represents 6% interest on the outstanding principal sum for the second year extension. If the City exercises the option to extend the maturity date for a portion of the second year, then the Owner shall pay the City on December 1, 2010, the sum that represents 6% interest for the time period of the extension of the maturity date.

4. The Owner reaffirms and acknowledges the obligations of the HODAG Note and shall pay, upon maturity or upon refinancing, sale, assignment, transfer, alienation or other disposition of the property, whichever occurs first, the sum of \$4,800,000 to the City of Hialeah.

5. The Owner agrees not to impair the security of the HODAG Note and HODAG Mortgage in any way including, but not limited to, obtaining a third mortgage or an advance on the first mortgage. The Owner further agrees not to take any action that would change the priority of the HODAG Mortgage.

6. This Agreement shall supersede and modify any terms of the HODAG Mortgage and HODAG Note that may be in conflict or cannot be reconciled with the terms of this Agreement.

(THIS SPACE IS LEFT INTENTIONALLY BLANK.)

Reaffirmation of HODAG Note Obligation and Extension of Maturity Date Agreement
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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of
City of Hialeah

Rafael E. Granado
City Clerk

Mayor Julio Robaina Date

Witness
Printed/typed name: _____

(SEAL)

Witness
Printed/typed name: _____

Approved as to legal sufficiency and as to form:

William M. Grodnick
City Attorney

245 C&C, LLC, a Florida limited
liability company
3850 Bird Road
Suite 801
Miami, Florida 33146

By: _____
Maurice Cayon, Manager

Witness
Printed/typed name: _____

Witness
Printed/typed name: _____